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**SECOND SUBSTITUTE SENATE BILL 5909**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Regala, Spanel and Thibaudeau)

READ FIRST TIME 03/08/01.

1 AN ACT Relating to financial responsibility requirements for  
2 vessels and facilities; amending RCW 88.40.011, 88.40.020, 88.40.025,  
3 and 88.40.040; and creating new sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the current  
6 financial responsibility laws for vessels and facilities are in need of  
7 update and revision. These changes are necessary due to the increased  
8 risks of spills, the length of time that has passed since the current  
9 standards were put in place, the recent changes that have occurred in  
10 federal statutory and case law, the comparative standards of other  
11 western states, and the recent experiences of other states with spills.  
12 The legislature intends that, whenever possible, the standards set for  
13 Washington state provide the highest level of protection consistent  
14 with other western states and to ultimately achieve a more uniform  
15 system of financial responsibility on the Pacific Coast.

16 **Sec. 2.** RCW 88.40.011 and 2000 c 69 s 30 are each amended to read  
17 as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

3 (1) "Cargo vessel" means a self-propelled ship in commerce, other  
4 than a tank vessel or a passenger vessel, of three hundred or more  
5 gross tons, including but not limited to, commercial fish processing  
6 vessels and freighters.

7 (2) "Bulk" means material that is stored or transported in a loose,  
8 unpackaged liquid, powder, or granular form capable of being conveyed  
9 by a pipe, bucket, chute, or belt system.

10 (3) "Covered vessel" means a tank vessel, cargo vessel, or  
11 passenger vessel.

12 (4) "Department" means the department of ecology.

13 (5) "Director" means the director of the department of ecology.

14 (6)(a) "Facility" means any structure, group of structures,  
15 equipment, pipeline, or device, other than a vessel, located on or near  
16 the navigable waters of the state that transfers oil in bulk to or from  
17 a tank vessel or pipeline, that is used for producing, storing,  
18 handling, transferring, processing, or transporting oil in bulk.

19 (b) A facility does not include any: (i) Railroad car, motor  
20 vehicle, or other rolling stock while transporting oil over the  
21 highways or rail lines of this state; (ii) retail motor vehicle motor  
22 fuel outlet; (iii) facility that is operated as part of an exempt  
23 agricultural activity as provided in RCW 82.04.330; (iv) underground  
24 storage tank regulated by the department or a local government under  
25 chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense  
26 more than three thousand gallons of fuel to a ship that is not a  
27 covered vessel, in a single transaction.

28 (7) "Hazardous substances" means any substance listed as of March  
29 1, 2001, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~August 14,~~  
30 ~~1989,~~) under section 101(14) of the federal comprehensive  
31 environmental response, compensation, and liability act of 1980, as  
32 amended by P.L. 99-499. The following are not hazardous substances for  
33 purposes of this chapter:

34 (a) Wastes listed as F001 through F028 in Table 302.4; (~~and~~)

35 (b) Wastes listed as K001 through K136 in Table 302.4; and

36 (c) The noncompound metals antimony, arsenic, beryllium, cadmium,  
37 chromium, copper, lead, nickel, selenium, silver, thallium, and zinc,  
38 when in solid form in a particle larger than one hundred micrometers  
39 (0.004 inches) in diameter.

1       (8) (~~("Inland barge" means any barge operating on the waters of the~~  
2 ~~state and certified by the coast guard as an inland barge.~~

3       ~~(9))~~ "Navigable waters of the state" means those waters of the  
4 state, and their adjoining shorelines, that are subject to the ebb and  
5 flow of the tide and/or are presently used, have been used in the past,  
6 or may be susceptible for use to transport intrastate, interstate, or  
7 foreign commerce.

8       (~~(10))~~ (9) "Oil" or "oils" means any naturally occurring liquid  
9 hydrocarbons at atmospheric temperature and pressure coming from the  
10 earth, including condensate and natural gasoline, and any fractionation  
11 thereof, including, but not limited to, crude oil, petroleum, gasoline,  
12 fuel oil, diesel oil, oil sludge, oil refuse, and oil mixed with wastes  
13 other than dredged spoil. Oil does not include any substance listed as  
14 of March 1, 2001, in Table 302.4 of 40 C.F.R. Part 302 adopted (~~(August~~  
15 ~~14, 1989,~~) under section 101(14) of the federal comprehensive  
16 environmental response, compensation, and liability act of 1980, as  
17 amended by P.L. 99-499.

18       (~~(11))~~ (10) "Offshore facility" means any facility located in,  
19 on, or under any of the navigable waters of the state, but does not  
20 include a facility any part of which is located in, on, or under any  
21 land of the state, other than submerged land.

22       (~~(12))~~ (11) "Onshore facility" means any facility any part of  
23 which is located in, on, or under any land of the state, other than  
24 submerged land, that because of its location, could reasonably be  
25 expected to cause substantial harm to the environment by discharging  
26 oil into or on the navigable waters of the state or the adjoining  
27 shorelines.

28       (~~(13))~~ (12)(a) "Owner or operator" means (i) in the case of a  
29 vessel, any person owning, operating, or chartering by demise, the  
30 vessel; (ii) in the case of an onshore or offshore facility, any person  
31 owning or operating the facility; and (iii) in the case of an abandoned  
32 vessel or onshore or offshore facility, the person who owned or  
33 operated the vessel or facility immediately before its abandonment.

34       (b) "Operator" does not include any person who owns the land  
35 underlying a facility if the person is not involved in the operations  
36 of the facility.

37       (~~(14))~~ (13) "Passenger vessel" means a ship of three hundred or  
38 more gross tons with a fuel capacity of at least six thousand gallons  
39 carrying passengers for compensation.

1       (~~(15)~~) (14) "Ship" means any boat, ship, vessel, barge, or other  
2 floating craft of any kind.

3       (~~(16)~~) (15) "Spill" means an unauthorized discharge of oil into  
4 the waters of the state.

5       (~~(17)~~) (16) "Tank vessel" means a ship that is constructed or  
6 adapted to carry, or that carries, oil in bulk as cargo or cargo  
7 residue, and that:

8       (a) Operates on the waters of the state; or

9       (b) Transfers oil in a port or place subject to the jurisdiction of  
10 this state.

11       (~~(18)~~) (17) "Waters of the state" includes lakes, rivers, ponds,  
12 streams, inland waters, underground water, salt waters, estuaries,  
13 tidal flats, beaches and lands adjoining the seacoast of the state,  
14 sewers, and all other surface waters and watercourses within the  
15 jurisdiction of the state of Washington.

16       **Sec. 3.** RCW 88.40.020 and 2000 c 69 s 31 are each amended to read  
17 as follows:

18       (1)(a) Any (~~inland~~) barge that transports hazardous substances in  
19 bulk as cargo, using any port or place in the state of Washington or  
20 the navigable waters of the state shall establish evidence of financial  
21 responsibility in the amount of the greater of (~~one~~) five million  
22 dollars, or (~~one~~) three hundred (~~fifty~~) dollars per gross ton of  
23 such vessel.

24       (b) The director by rule may establish a lesser standard of  
25 financial responsibility for barges, transporting hazardous substances,  
26 of three hundred gross tons or less. The standard shall set the level  
27 of financial responsibility based on the quantity of cargo and type of  
28 cargo the barge is capable of carrying.

29       (2)(a) Except as provided in (b) or (c) of this subsection or  
30 subsection (5) of this section, a tank vessel that carries oil as cargo  
31 in bulk shall demonstrate financial responsibility to pay at least five  
32 hundred million dollars. The amount of financial responsibility  
33 required under this subsection is seven hundred fifty million dollars  
34 after January 1, 2002, and one billion dollars after January 1, 2004.

35       (b) The director by rule may establish a lesser standard of  
36 financial responsibility for tank vessels or barges of three hundred  
37 gross tons or less. The standard shall set the level of financial  
38 responsibility based on the quantity of cargo the tank vessel or barge

1 is capable of carrying. The director shall not set the standard for  
2 tank vessels or barges of three hundred gross tons or less below that  
3 required under federal law.

4 (c) The owner or operator of a tank vessel who is a member of an  
5 international protection and indemnity mutual organization and is  
6 covered for oil pollution risks up to the amounts required under this  
7 section is not required to demonstrate financial responsibility under  
8 this chapter. The director (~~(may)~~) shall require the owner or operator  
9 of a tank vessel to prove membership in such an organization.

10 (3)(a) A cargo vessel or passenger vessel that carries more than  
11 six thousand five hundred barrels of oil as fuel shall demonstrate  
12 financial responsibility to pay (~~(the greater of at least six hundred~~  
13 dollars per gross ton or five hundred thousand)), except as provided in  
14 subsection (5) of this section, at least three hundred million dollars.

15 (b) A cargo vessel or passenger vessel, as defined in RCW  
16 88.40.011, that carries: (i) Between one and ten barrels of oil shall  
17 demonstrate financial responsibility to pay at least two million  
18 dollars; (ii) between eleven and fifty barrels of oil shall demonstrate  
19 financial responsibility to pay at least five million dollars; (iii)  
20 between fifty-one and five hundred barrels of oil shall demonstrate  
21 financial responsibility to pay at least ten million dollars; (iv)  
22 between five hundred one and one thousand barrels of oil shall  
23 demonstrate financial responsibility to pay at least twenty million  
24 dollars; and (v) between one thousand one and six thousand five hundred  
25 barrels of oil shall demonstrate financial responsibility to pay at  
26 least twenty million dollars for the first one thousand barrels and  
27 five million for each additional one thousand barrels.

28 (c) The owner or operator of a cargo or passenger vessel who is a  
29 member of an international protection and indemnity mutual organization  
30 and is covered for oil pollution risks up to the amounts required under  
31 this section is not required to demonstrate financial responsibility  
32 under this chapter. The director shall require the owner or operator  
33 of a tank vessel to prove membership in such an organization.

34 (4) The documentation of financial responsibility shall demonstrate  
35 the ability of the document holder to meet state and federal financial  
36 liability requirements for the actual costs for removal of oil or  
37 hazardous substance spills, for natural resource damages, for civil  
38 penalties and fines imposed, for removal of shipwrecks and ship debris  
39 from the lands and waters of the state, and for necessary expenses

1 related to a spill, or substantial threat of a spill, involving oil or  
2 a hazardous substance.

3 (5) The department may by rule set a lesser amount of financial  
4 responsibility for a tank vessel, cargo vessel, or passenger vessel  
5 that meets safety performance or other standards (~~for construction,~~  
6 ~~propulsion, equipment, and personnel~~) established by the department.  
7 The department shall require as a minimum level of financial  
8 responsibility under this subsection the same level of financial  
9 responsibility required under federal law.

10 (6) This section shall not apply to a covered vessel owned or  
11 operated by the federal government or by a state or local government.

12 (7) The department shall review the statutory financial  
13 responsibility requirements established in this section and make  
14 recommendations regarding the sufficiency of the requirements to the  
15 legislature and the governor at least every five years with the first  
16 report due November 1, 2005.

17 **Sec. 4.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to  
18 read as follows:

19 (1) An onshore or offshore facility shall demonstrate financial  
20 responsibility in an amount determined by the department, and  
21 established in rule by January 1, 2004, as necessary to compensate the  
22 state and affected counties and cities for damages that might occur  
23 during a reasonable worst case spill of oil from that facility into the  
24 navigable waters of the state and for civil penalties and fines  
25 imposed. The department shall consider such matters as: (a) The  
26 amount of oil that could be spilled into the navigable waters from the  
27 facility((~~7~~)); (b) the cost of cleaning up the spilled oil((~~7~~)); (c)  
28 the frequency of operations at the facility((~~7~~)); (d) the amount of  
29 civil penalties and fines that could be imposed; (e) the damages that  
30 could result from the spill; and (f) the commercial availability and  
31 affordability of financial responsibility for both large and small  
32 facilities.

33 (2) This section shall not apply to an onshore or offshore facility  
34 owned or operated by the federal government or by the state or local  
35 government.

36 NEW SECTION. **Sec. 5.** To assist the department in determining the  
37 proper levels of financial responsibility for onshore and offshore

1 facilities, as required under RCW 88.40.025, the department shall  
2 contract for an independent economic analysis regarding adequate levels  
3 of financial responsibility. The analysis shall include consideration  
4 of the matters identified in RCW 88.40.025. The analysis shall be  
5 completed and delivered to the legislature and governor by September 1,  
6 2002.

7 **Sec. 6.** RCW 88.40.040 and 2000 c 69 s 33 are each amended to read  
8 as follows:

9 (1) (~~The department shall deny entry to the waters of the state to~~  
10 ~~any vessel that does not meet the financial responsibility requirements~~  
11 ~~of this chapter~~) It is unlawful for any vessel required to have  
12 financial responsibility under this chapter to enter or operate on  
13 Washington waters without meeting the requirements of this chapter or  
14 rules adopted under this chapter, except when necessary to avoid injury  
15 to the vessel's crew or passengers. Any vessel owner or operator that  
16 does not meet the financial responsibility requirements of this chapter  
17 and any rules prescribed thereunder or the federal oil pollution act of  
18 1990 shall be reported by the department to the United States coast  
19 guard.

20 (2) The department shall enforce section 1016 of the federal oil  
21 pollution act of 1990 as authorized by section 1019 of the federal act.

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